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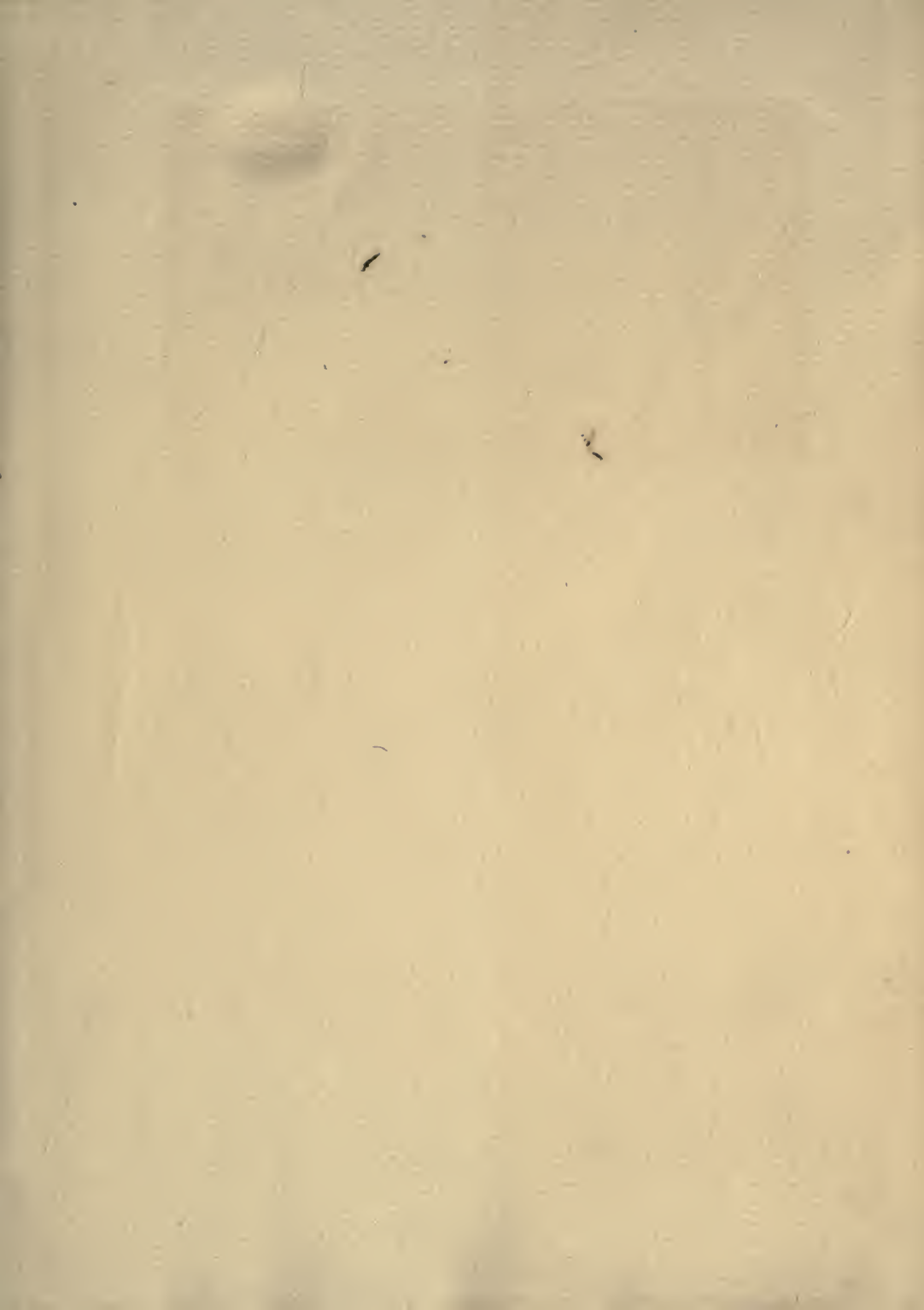
LEGAL TENDER

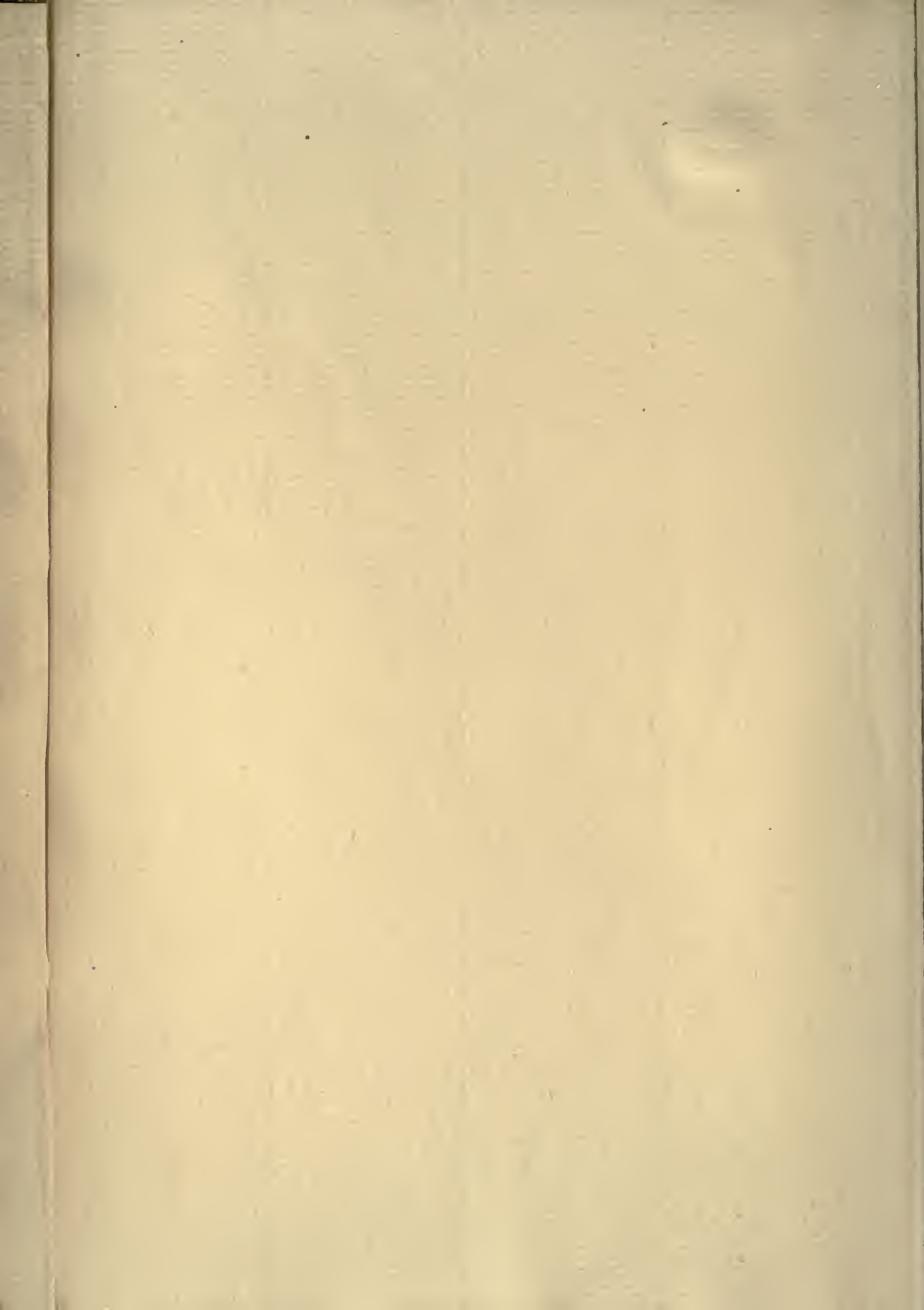
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MISUSE
OF LEGAL TENDER

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GENERAL



MISUSE OF LEGAL TENDER.

It is the necessary duty of every State to prescribe a uniform money of account—the signs and figures of its expression. Without such money of account, enforced by the State throughout its jurisdiction, justice can not be done to suitors in its courts of law, nor symmetrical and orderly statements of receipts and expenditures, debts and credits, be kept in its public offices. Therefore, one of the first things the Congress did, when it had assembled under the new Constitution, was to declare that “the money of account of the United States shall be expressed in dollars or units, dimes or tenths, cents or hundredths.” The Federal Constitution having used the

word "dollars" twice—once in the declaration that, in suits at common law, the right of trial by jury shall be preserved, "where the amount in controversy shall exceed twenty dollars"—it is to be implied that Congress could not have adopted any other unit.

Another function of the State, even more necessary and important, is to prescribe a uniform measure of value, time, weight, quantity, distance, in which contracts can be expressed, and by the judicial power their performance enforced. Of those functions, the most perplexing for lawmakers has been the providing of a uniform measure, standard and unit of value, commonly called "money," which is to pass freely from hand to hand, and everywhere be accepted without regard to the credit of the person tendering it. Such money is to be not only the common denominator of all thinking concerning values, not only the common medium for buying,

selling, exchanging products and services, but the standard by which to foreknow the value of a contract to be completed, or an act to be done, in the future.

The United States decided to make and emit all American money, and to prescribe the value of foreign coins the circulation of which as lawful money was to be permitted. The several States surrendered to Congress their power "to coin money, regulate the value thereof, and of foreign coin." The thing by comparison with which the value of every other thing could be ascertained was described as "money." It was to be metallic. Its quantity was, until the law of 1853 relating to minor silver coins, determined not by Congress, but, under free coinage of silver and gold, by the quantity of those metals carried by individuals to the mints to be coined, and of those coins taken back to the melting pots to be changed into bullion. Thus it is now under the free coinage of gold. Whoever

will take gold to the mints can have it freely made into money. Under free coinage all the gold in the world is potential money. The Congress of the era of the Constitution no more deemed it expedient to prescribe or limit the quantity of money than the number of plows or hoes.

Whether the first Congress embodied our monetary unit in a silver dollar or in a gold dollar, or the unit reposed in both metals on a weight ratio of an ounce of gold to fifteen ounces of silver, it is not material now to inquire.

The standard of value has never been any sort of a paper dollar, even although the greenback dollar was after 1862 a legal-tender dollar.

The law of 1873 having declared that a one-dollar coin, containing $25\frac{8}{100}$ grains of standard gold, "shall be *the* unit of value," made that dollar, and no other dollar, to be thereafter the legal and sole measure of all value. Whether a good or a bad standard,

it is the standard ordained by a law unrepealed and unmodified. It became then and there a part of every promise, or contract, thereafter made to pay a dollar. The standard dollar of the United States is now embodied in that metal, and only in that metal.

It is familiar knowledge, that laws existing at the time and place of a contract form a part of its validity, its construction, its enforcement, and its discharge.

It goes without saying that the standard of value which is a part of a contract should not be changed by legislation so as to impair the obligation of an existing contract, any more than the standard of quantity should be changed; nor when a debt has been created by a contract, the payment of which is long deferred, should a subsequent law intentionally change the medium of payment in order to benefit either the payer or payee.

It is bad enough and deplorable enough

when a standard of value fluctuates by natural causes, by variations in the demand or supply of the precious metal or metals of which it is composed, or by causes which a government can not satisfactorily control. An absolutely unvarying standard of value is probably an unattainable object, but governments can at least abstain from meddling therewith solely in order to benefit debtors or creditors, and transfer the ownership of property.

When a standard of value has been established by law, that dollar which is the standard of value, and no other dollar, should be the dollar in tender of payments.

The United States had an illuminating experience of a depreciating legal-tender dollar which fell from 97½ cents in January, 1862, to 38½ cents in July, 1864, and of an appreciating legal-tender dollar which rose from that last named gold value to 100 cents in 1879. The United States have had a similar experience of the depreciation of

the gold price of an ounce of pure silver, which was \$1.31³/₁₀ in 1834 (when the ratio was changed to 1 to 16), \$1.36 in 1859, and is now 75 cents.

It required an experience like that of our war of secession to teach us that one dollar may differ from another in value, and the dollar of to-day may be less or more in value than that of to-morrow.

Not less difficult than keeping a dollar invariable in value is ascertaining precisely the increase or decrease, from time to time, of the purchasing power of a dollar. The experts are not many whose mental and moral equipment, whose experience in trade, are such as to dispel all suspicions of doubt of the accuracy of their appreciations of samples and averages, quantities and qualities, and of their deductions from tables of prices.

The most deplorable effect of such fluctuations in a standard of value is the universal deception of the community respect-

ing the increase or diminution of its wealth, manifested in the case of a depreciating standard by extravagant expenditure, followed, when the bubble bursts, by a period of long depression.

After the enactment of the Sherman law of 1890 the United States had only one standard dollar, but had four differing dollars, each available as tender under conditions specified in the statute enacting each.

The discretion given by Congress, and exercised by each successive Secretary of the Treasury since the resumption of specie payments in 1879, has been successful in maintaining parity, within the jurisdiction of the United States, between each and all of those dollars.

If the law shall withdraw that discretion, or if a future Secretary of the Treasury shall reverse the policy of his predecessors, refuse to redeem with the standard gold dollar the old or new greenback debt, and refuse gold dollars to Congressmen, judicial

officers, officeholders, pensioners, and other Government creditors, whenever the head of the Treasury has a choice between paying silver or gold dollars, the real condition of our enactments concerning tender will leap to light.

If the transaction of selling, buying, delivering, paying, is instantly finished, the quality or value of the currency which is the medium of the exchange may not be important. The delivering and paying being simultaneous, disputes will not be likely to appear, growing out of differences respecting the dollars of payment, and requiring for settlement the aid of suits at law to recover damages for nondelivery of the article purchased on tender of the price, or of a suit in equity to enforce a specific delivery. But when, by the contract, payment is a long time deferred, as in the case of a railway bond not due and payable till a half century after its date, uncertainty in regard to the medium of payment created by the

possibility of legislation intended to affect that medium, and so modify the contract, can but be disturbing.

Precisely that uncertainty is what is now so alarming investors, owners of loanable capital, and every one who has, or hopes to have, money at interest the payment of which is deferred. The real cause is the misuse of legal tender in and since 1862, the vindication by the Supreme Court of that misuse, and the possibility of new legislation in the same direction which will impair or modify the obligation, expressed or implied, of existing contracts.

There is even distrust whether, in any contract for the future payment of dollars, the dollars can be so described as to escape legislation modifying the contract in respect to the possible dollars of legal tender.

The States denied to themselves by the Constitution the right to emit "bills of credit," meaning thereby a promise to pay money, issued directly by the State, involv-

ing the credit of the State, and intended, on such credit, to circulate in the ordinary uses of business, and the Supreme Court has decided that notes issued by banks chartered by a State are not the forbidden "bills of credit."

In that condition of the law, and with no lawful money possible besides metallic money, why was there need of a thing called "legal tender"? Why did the Constitution declare, and why did the States consent to the declaration, that "no *State* shall make anything but gold and silver coin a tender in the payment of debts"?

The term of the Constitution is "tender," not "legal tender." It applies only to a "debt," which is a definite and fixed sum of money due by one individual to another. It may be created by contract, statute, or judgment. A promise by an individual, or a judicial decree in equity, to deliver a horse, or a ton of silver bullion, does not create a "debt." A promise or a judgment to pay

a definite sum in "dollars" does create a "debt," and the law of "tender" applies.

"Tender" is in all law—Roman, French, English, or American—a part of the law of "payment," and is treated as such. It is technically applicable only to contracts for the payment of money. It is payment duly proffered to a creditor, which may be rendered abortive by the act of the creditor. Under the Code Napoléon (Title III, § 1258) a legal tender must be made through a ministerial officer. The effect of a valid tender, if rejected, is not to discharge the debt, but to enable the debtor, when sued for the debt, to pay the money into court, and get judgment for such cost of his defense as accrued after the tender. If a State can not be sued, then the law of tender does not apply to the State. One may have contracted to deliver, at a specified time and place, a ton of pure gold, may refuse or fail to deliver, and then a suit can be begun for damages to be proved and assessed in

dollars. In such a case, as a "debt" by judgment is impending, a tender is applicable.

How a legal-tender prohibition, applicable to the States in the Union, came to pass, can best and easiest be appreciated by reading the statutes of any one of the several States enacted or in force contemporaneously with the framing of the Federal Constitution.

Those statutes enable the defendant in every action of debt, covenant, trespass, trover, slander, or libel, to make and plead a tender, or bring into court the money due on such contract, or sufficient amends for such trespass or injury, as well as the plaintiff's costs up to the time of tender; and if the plaintiff refusing it shall go on with his suit, and the damages finally assessed shall not be more than the tender, the plaintiff shall not recover costs, and shall pay to the defendant his costs.

One readily discerns that a motive and

a purpose of such a legal-tender law was to stop litigation and benefit a deserving defendant. The chief motive was not to benefit a particular coinage, or currency, as by compelling individuals, strangers to the transaction, to take as money something the Government had given as evidence of its own indebtedness, or to accept a subsidiary and inferior coin not a unit of value, which coin was made by Congress only to furnish a market for the product of certain silver mines!

A comparison of the greenback legislation of 1862, the silver-dollar coinage enactment of 1878, the Sherman law of 1890, with the foregoing very elementary exposition of the real purpose of "legal tender," will make obvious how it has been misapplied by Congress.

The enactment of February 21, 1853, reducing the weight of half-dollar, quarter-dollar, dime, and half-dime silver coins, deserves brief mention here. Then began

Treasury purchasing and coining of silver solely on Government account. In 1834, when our coinage ratio was 1 to 16, and silver on that ratio \$1.29 an ounce, the actual price in Europe was over \$1.31, in 1853 was \$1.34, and in 1859 was \$1.36. No silver could remain with us on those terms. To prevent the departure, the weight of the half-dollar was in 1853 reduced from 206 $\frac{1}{4}$ standard grains to 192 grains, or some seven per cent; the sub-multiples were reduced in proportion, and made a legal tender for sums not over five dollars. Then, for the first time, our silver coins were not all a full legal tender. They have never all been such since then, as will be discerned further on. Silver began to fall from \$1.36 an ounce to its present price, but nevertheless there was no effort, forty years ago, to make the under-weighted coins a full tender in payment of debts.

The Congress which met after the presi-

dential election of 1860 found the Treasury in need of money. Unprecedented expenditures were in sight. Only two methods of obtaining money were thought of during 1861, namely, taxing and borrowing, as was done for the War of 1812, and for the Mexican War, when our finances were kept on a metallic basis. In July and August of that year the emission of Treasury notes "in exchange for coin" was authorized. They did not bear any interest; they were redeemable on demand; they were to be accepted for all Government dues. No legal-tender power was given to them. The sub-Treasury law was suspended to enable the coin obtained to be deposited in "solvent specie-paying banks," thence to be withdrawn by checks. After the battle of Bull Run the banks took a hundred and fifty million of the loan, expecting the Treasury to permit the money to be deposited with them, and by the Treasury drawn out by checks as needed; but the Treasury

having demanded gold immediately, the demand compelled the banks to suspend specie payments, and a crisis was at hand. The Treasury, by one blow, "broke" the banks and itself !

In the beginning of 1862 two plans were before the House Ways and Means Committee for meeting the crisis and obtaining funds and supplies for the war. In both, notes were to be issued, not bearing interest, but receivable for Government dues. The two plans differed in respect to legal-tender power. There were in the committee two contending schools of economic thought. One was led by Mr. Morrill, of Vermont, and the other by Mr. Spaulding, of New York. The former insisted that the new notes would circulate without attaching thereto the legal-tender quality; that the circulation would be adequately secured by making them receivable for all national taxes, dues, and loans; that if cheaper than coin they would be preferred

by one class, the debtors and purchasers; that no appreciable and useful advantage would be gained by compelling creditors to receive them in satisfaction of pre-existing debts, even if Congress had the right to make them a legal tender. The other school substantially conceded the unconstitutionality of the legal-tender feature of a credit currency in time of peace, but contended that the new notes would not circulate unless those taking them for supplies sold to the Government could compel their creditors, and all creditors, to take them for antecedent debts payable in dollars, thus making the notes a sort of forced loan, if any loan at all. After two months' debate, the party led by Mr. Spaulding won, and in a little more than a twelvemonth some four hundred and fifty millions of the notes were issued. In July, 1864, their gold value was only 38 cents, and the price of what the Government purchased with the notes was increased nearly 300 per cent. The Gov-

ernment received on an average about par in notes for its bonds sold, but only half as much in gold, even although the selling agents made implied promises that the bonds should be paid in that metal. In the presence of the four hundred and fifty millions of greenbacks, gold and silver fled away, as now gold departs in presence of one hundred and forty-seven millions of Sherman notes emitted since 1890.

Congress did not give to the new notes a legal-tender power in order to promote the administration of justice in our courts, or to protect from costs of litigation a defendant tendering what was lawfully demandable from him, or to prevent lawsuits, but to float Government bills of credit, and benefit a new form of credit currency. It was much as if, under an "eight-hour law" for laboring men, Congress doubled or diminished by half the length of an hour, in order to promote the sale of a new kind of clock in which Congress was interested,

and made the changed hour apply to pre-existing contracts for labor! It was a terrible arraignment of the legal-tender legislation of 1862 which the Supreme Court uttered by the pen of Chief-Justice Chase, in the decision in the case of *Hepburn vs. Griswold*, when he wrote:

“The legal-tender quality was only valuable for the purpose of *dishonesty*. Every honest purpose was answered as well, and better, without it.”

The second dealing by the Government with legal tender was in 1878, when Congress, having in 1875 ordered the greenback debt to be paid and destroyed after 1879, required the paid greenbacks to be re-issued. That was, in effect, a new creation of new notes and of new debt, in time of peace and without war necessity. Congress did not venture to expressly attach a legal-tender faculty to the new bills of credit, but the Supreme Court did, in *Juilliard's* case.

In the same year of currency woe came the law "to authorize a silver dollar and to restore its legal-tender character." Then the coining ratio of silver and gold was by law 1 to 16; the market ratio was 1 to 18; the coining value of an ounce of silver was \$1.29 in gold, but the market value was \$1.15, and of a silver dollar was only 98 $\frac{1}{10}$ cents. Those new silver dollars Congress made a "legal tender at their nominal value, for all debts and dues, public and private, except where *otherwise expressly stipulated in the contract.*" Here, as in 1862, the motive and purpose were to use legal tender to float a currency. The plan of 1853 was adopted, only adding more legal-tender faculty. The new silver dollar was not made a full legal tender, inasmuch as certain debts were excepted, but the misemployment of legal tender was all the same.

The contention of Mr. Bland is that, up to 1873, the silver dollar, containing 371 $\frac{1}{4}$ grains of pure silver, was the unit of account

and standard of value ; but even if, in that year, the gold dollar of $25\frac{8}{100}$ standard grains was made the sole unit and standard, yet his law of 1878, "for the coinage of the standard silver dollar, and to restore its legal-tender character," displaced the gold and replaced the silver standard. A misconception and snare! Recoinage, and limited legal-tender power, did not make the restored silver dollar a unit and measure of all values. And, besides, the full legal-tender power of 1792 was not in 1878 given to silver.

It is quite true that, when specie payments were resumed in 1879, recoinage of the silver dollar had gone on a year, and that the new silver dollar law entered, with its legal-tender attachment, like every other pertinent law, into every contract to pay dollars thereafter made in the United States. It is also quite true that every debt of the United States, subsequently created and specifically payable in "coin," can in the

discretion of the Treasury be discharged by the tender of silver dollar coin, but even that legal-tender faculty does not, and did not in 1878, make the silver dollar the unit and standard of value. The "parity" declaration in the Sherman law would, were there nothing else, cut out by the roots Mr. Bland's contention. His speeches, urging free coinage as a means of lifting the silver in the silver dollar to a commercial parity with the gold in the gold dollar, recognize the fact that the silver dollar has depreciated below the standard gold dollar. He would elevate silver up to the standard! He does not propose to reduce the number of grains of standard gold in the gold dollar, but, if he shall fail to get free coinage on a basis of 1 to 16, he would increase the weight and size of the silver dollar so that it shall conform to the gold dollar. He vociferates against the gold bug, but yet pleads in the same shrill notes that the silver bug is to be lifted into a present commercial and

world-wide equality and equivalence with the other bug.

Finally, in 1890, came a still more disastrous misapplication of legal tender at a time when neither war nor any other public necessity constrained it, because applied to a pure credit currency. The motive was the purchase of silver bullion, not all to be necessarily coined, but to be in part a warehoused and useless Government asset. The Government not having the ready money with which to pay for the purchases, it was proposed to issue Treasury notes predicated on and measured by the gold value of the silver when bought; and so, precisely as in the war period of 1862, Congress attached a legal-tender faculty to the notes issued as Government debt to those selling silver bullion to the Government. In order to float the more than one hundred and forty-seven millions of Treasury notes now outstanding for silver purchases since 1890, Congress said in effect to the sellers of the silver,

that the law will compel every creditor to accept the notes in discharge of anybody's debt, "except where otherwise expressly stipulated in the contract." The old exception of 1869 and 1878 was paraphrased. The motive and purpose of 1890 were to again dishonor legal tender by making it a float for the Sherman Treasury notes emitted in exchange for silver.

The tender of payment, to prevent or stop litigation, or, if the suit can not be prevented or stopped, to compel the plaintiff to pay all the costs, is not a frequent event. If the tender be made in any sort of circulating currency, such as bank notes, it will be valid unless the creditor specifically objects to the kind of dollars tendered. But when such formality shall be required, it is obvious that only the dollar which is by law the "unit of value," the standard of all value, and an unlimited legal tender (which no greenback or silver dollar is), should be used. Take away from the silver dollars

and paper dollars legal-tender power in the law courts, and fear of repudiation, or scaling down of debts thereby, will disappear. The United States have now some seventy million dollars of minor silver coinage, but that mass excites no solicitude, and would not if ten times as much, because it can not under the law of 1879 be a tender for over ten dollars in one payment.

In presence of the divergencies and the uncertainties of opinion in respect to the future of silver among currency experts and those who are responsible for the management of the treasuries, the mints, and the mines of the world, it is becoming a lawyer, not professing to be an expert therein, to be reserved in the expression of an opinion on the subject. But even a mere lawyer may perhaps be permitted to think that a metal so unstable in price as silver has been since 1859, when its value was \$1.36 an ounce, is not suitable for the embodiment of a unit and standard of all

value, and for an unlimited legal tender. It may be that gold has risen in price, and silver has not fallen in price sixty-six cents an ounce in thirty-four years; but the rise of gold or fall in silver, whichever it may be, began nearly a dozen years before the Franco-German War, the German change from a silver to a gold standard, the American adoption in 1873 of a unit of value exclusively gold (which is here and there denounced as a crime done in concealment), and the closing of the mints of the Latin Union to silver.

The rise in the price of gold and the fall in the gold price of commodities are only different terms describing the same thing. Possibly the appreciation of gold, and not man's inventions, hammered down the prices of commodities; but, contemporaneously, the wages of labor, the income of professional men—clergymen, lawyers, physicians, surgeons, and teachers—the salaries of those who conduct exchanges and great

enterprises, have increased enormously. During the memory of living man the annual interest to be paid for borrowed capital has diminished over fifty per cent.

If the gold price of bodily and mental labor has risen, and the rate of interest to be paid by borrowers has fallen, will a contemporaneous rise in the price of gold injure debtors, even although they have to pay what will buy more commodities than it would have bought when they borrowed, so long as those commodities can be procured with proportionately less of such bodily and mental labor? But, however that may be, a fluctuating dollar is none the less an evil.

It is noteworthy that none of those predicting national woes if Congress shall cease annually buying and warehousing fifty-four million ounces of silver, tell us of the future production and price of silver when the cessation shall have taken place. Will silver keep on fluctuating in price, or will it

sink to a price measured by the lowest cost and profit of improved methods of extraction, and remain reasonably stable around that pivot price? Was the great fall in the price of steel rails a calamity? As merely a commodity, silver, at fifty cents an ounce, will be more accessible than now to those of moderate means who will be so glad to have silver forks, spoons, teapots, coffee-pots, and all the beautiful ornaments into which silver can be worked—will it not? As a money metal, as currency, or even as a unit of value, a diminished price may not be fatal to its use if that price is stable and fixed. Indeed, silver when stable at fifty cents an ounce will be more suitable for a money measure than when tumbling down from \$1.36 an ounce in 1859 to seventy cents an ounce in 1893.

All the governments of the world entering into treaty stipulations with one another to throw wide open all their mints to the free coinage of full legal-tender silver coin

and gold coin, on a fixed-weight ratio, can, by the thumbscrew of legal tender, probably lift the price of silver or depress the price of gold (whichever be the proper phrase) to a parity at $15\frac{1}{2}$ to 1; but what can the United States do if there shall be refusal at London, Berlin, Paris, Vienna, Madrid, and Rome? Washington can not by war, even by the aid of its "white squadron," compel international bimetalism—can it? Concerted action by all the nations can make an international court for the adjustment of international differences, and peaceful arbitration the universal rule, and can thus bring to pass the end of armed strife, and the opening of the happy day when nations shall learn war no more and prepare for war no more. But, unfortunately, the coming of international bimetalism now seems postponed to as far off a future, thanks largely to the doings of the American Congress in 1878 and 1890, as is that "Congress of Nations" for which good



men in the Old World have longed and labored, and died without the sight. Mr. Gladstone's Government, now holding the key of the position, seems at this moment as likely to overthrow the gold monometallic standard as to stipulate by treaty that Parliament shall enact the McKinley law, or throw into the Thames the "Old Lady of Threadneedle Street," with all her treasures.

The problem now presented by silver is in one aspect colossal in its complexity! It is a part of the currency problem which occupies Europe, America, and Asia, superseding for the moment the problem of taxes and their incidence. In dealing with it, the greatest experts "audibly acknowledge hesitation." But all agree, it is to be hoped, that the unit of value, the standard of deferred payments, the full legal-tender money, with which all token currency, all fiduciary currency, all the "counters" for small transactions shall conform, ought to be embodied only in a stable metal, or in stable metals

whose relation to one another is fixed and motionless.

The existing legal-tender system of England makes gold coins the principal legal tender (Bank of England notes are a tender above five pounds excepting when made by the bank), but all silver coins composed of less valuable material, and circulated above their real value, or, in other words, as token coins, are, like our own minor silver coins, a legal tender only to a limited amount.

The *fiat* theory of money—namely, that its value can be created and upheld by the State everywhere within its jurisdiction—rests on the contention that the State, by its power of deciding what shall be a legal tender and a discharge of all debts, can determine not only what substance shall be money, but what within limits shall be the value of that substance. Legal tender is the fulcrum—whether in the case of the *fiat* theory that the value of the money is con-

trolled by the will of the Government, or in case of the *free-trade* theory that the value of silver and gold is independent of real control by the State, but is determined by economic conditions, or in case of the *bimetallic* theory which occupies a middle ground between the *fiat* and free-trade theories.

The United States, by the unmodified second section of the law of February 28, 1878, stand committed to the constant endeavor to establish "internationally the use of bimetallic money," and the fixity of relative value between the two metals. Appropriations were made therefor in 1878, and down to 1892. Commissioners have repeatedly been appointed by successive Presidents, and sent to Europe, notably and recently to the conference at Brussels, in aid of that result. Under the head of the "Diplomatic Service" there is surviving in the report by the Register of the Treasury for 1892 an unexpended balance significantly

described "*International Remonetization of silver.*" If the country and Congress have turned their backs on international bimetalism, then longer taxing us to promote it by conferences, or by diplomatic methods, seems rather incongruous.

Whatever is to be the outcome of the battle of the standards—whether a single standard, a multiple standard, or a composite standard—let the only legal-tender dollar be that which is the standard dollar.

Even a casual inspection of our existing laws relating to tender will disclose how irrational they are.

All gold coins are, under the law of 1873, a legal tender, "in all payments," at their nominal value, when not below the standard weight and limit of tolerance; and if below, then in proportion to actual weight. They are unlimited legal tenders. Nothing else is!

All greenback dollars are, under the law

of 1862, receivable in payment (1) of all loans made to the United States, and (2) of all taxes, debts, and demands of every kind due to the United States, "except duties on imports and interest, and (3) of all claims and demands against the United States "except for interest upon bonds, notes, and certificates of debts or deposit." They are in addition "a lawful money, and a legal tender in payment of all debts, public and private, within the United States, except duties on imports and interest, as aforesaid." That law of 1862 was the first to make anything "lawful money" besides metallic money. Congress did not declare that the legal-tender clause shall be retroactive, but the Supreme Court did so adjudge. Before that judgment came, and indeed before the legal-tender clause had been by the judicial power pronounced constitutional, the court endeavored to rescue several classes of "debts" from the clutches of the law, such as State taxes, and "debts"

payable specifically in coined dollars or in gold dollars.

All silver dollars are, under the law of 1878, a legal tender, at their nominal value, for all debts and dues, public and private, "*except where otherwise expressly stipulated in the contract*"; but the silver coins of smaller denomination than one dollar are a legal tender in full payment of dues, public and private, "in all sums not exceeding ten dollars."

All (Sherman) Treasury note dollars are, under the law of 1890, receivable for customs (which by statute the old greenbacks are not, although made so by Treasury order since 1879), for taxes, and *all public dues*, and "a legal tender in payment of all debts, public and private, *except where otherwise expressly stipulated in the contract.*" Are they payable, and to be received, for principal and interest of the public debt? The old (1862) greenback legal-tender clause is, "all debts, public and

private, except duties on imports and interest, as aforesaid." The silver-dollar (1878) clause is, "all debts and dues, public and private, except where otherwise expressly stipulated in the contract." That clause, omitting "dues," was paraphrased in 1890.

The result of the analysis is, that gold coins are first in precedence, because they have unlimited legal-tender power. Silver dollars come next, but are inferior to gold coins when a contract calls for them or for any other dollars. Sherman Treasury note dollars come next, and are superior to the old greenbacks, which are really at the foot of the list.

Gold certificate dollars, silver certificate dollars, and national bank note dollars are not legal tenders in any sum whatever, and should not be. A gold dollar is the only full and unlimited tender; it is the "unit of value"; it is now the standard to which all dollars must conform!

If for any reason the Treasury shall fail to maintain the present local "parity" of all our dollars, and the silver dollar shall be in purchasing power no more worth than the gold value of the silver therein, then what will be the legal effect of the phrase, "shall be a legal tender, except where otherwise stipulated in the contract"; or rather (which is more important), what will the judicial power say shall be the legal effect? The origin of the phrase is in the law of 1869 "to strengthen the public credit." It was novel in legal-tender legislation and literature.

Will a promise in a bond or note to pay gold dollars, be taken as an *expressed* stipulation not to make or plead in court a tender of silver dollars? It surely should be taken as at least an *implied* stipulation. What control will be given to the adverb "expressly"? Will an expressed stipulation to *pay* gold dollars be taken as an expressed stipulation not to *tender* silver

dollars? Must the stipulation "expressly" cover tender? If when the note or bond falls due, and there shall be a difference of fifty per cent between gold dollars and silver dollars, and the latter, having been tendered at their nominal value and refused on a gold-dollar contract, will the court give judgment and issue execution for gold dollars and the plaintiff's costs? What will our Supreme Court adjudge if a future Congress shall enact that the present standard silver dollar shall be a full legal tender for all private debts payable in gold dollars? Must those loaning or investing protect themselves by stipulating for payment in a specified weight of pure or standard gold, as bullion, and only thus be rid of the legal consequences of using the word "dollars"?

One readily and naturally answers, that to permit a contract calling for gold dollars, each containing $25\frac{8}{10}\%$ standard gold, to be satisfied by tendering silver dollars each worth only 54 cents in gold, will be an im-

pairment of the obligation of a contract, and no court will tolerate such impairment. But such a one may not have carefully studied the reasons assigned by the Supreme Court in Juilliard's case, its averment that the Federal Government—meaning the law-making power—is sovereign in coinage and legal tender, and its intimation that, although the Constitution has forbidden a State to pass a law "impairing the obligation of contracts," no such prohibition has been put on Congress.

A great many investors, and not a few lawyers, were startled when the Supreme Court declared in its second legal-tender decision that "the obligation of a contract to pay money is to pay that which the law shall recognize as money when the payment is to be made." Not less disturbing was the judicial announcement in the same opinion that it is incorrect "to speak of a standard of values"; that "value is an ideal thing"; that "the gold or silver thing we

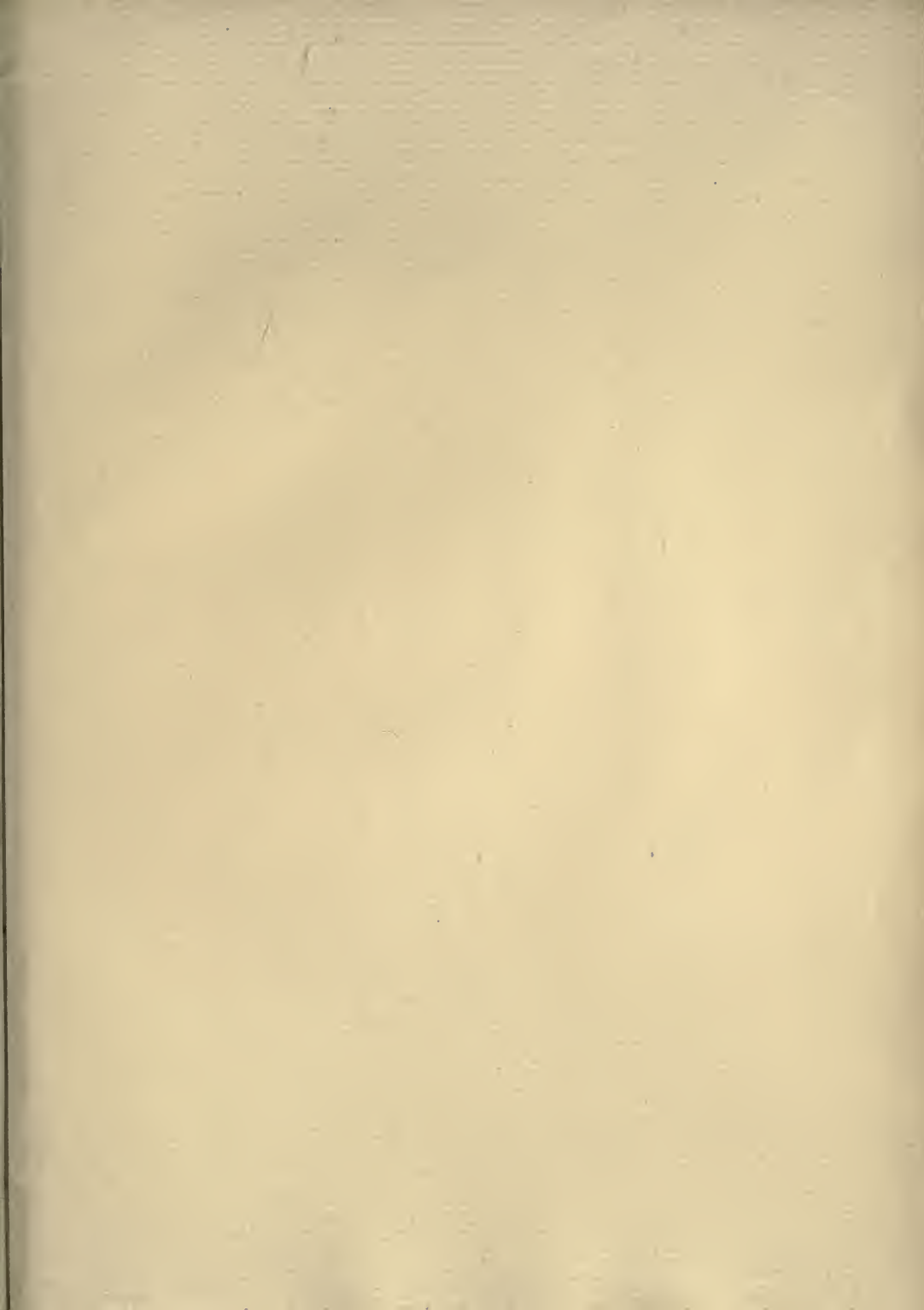
call a dollar is in no sense a standard of a dollar," but only a representative of it. Therefore "an honest dollar" and "a legal dollar" must be the same.

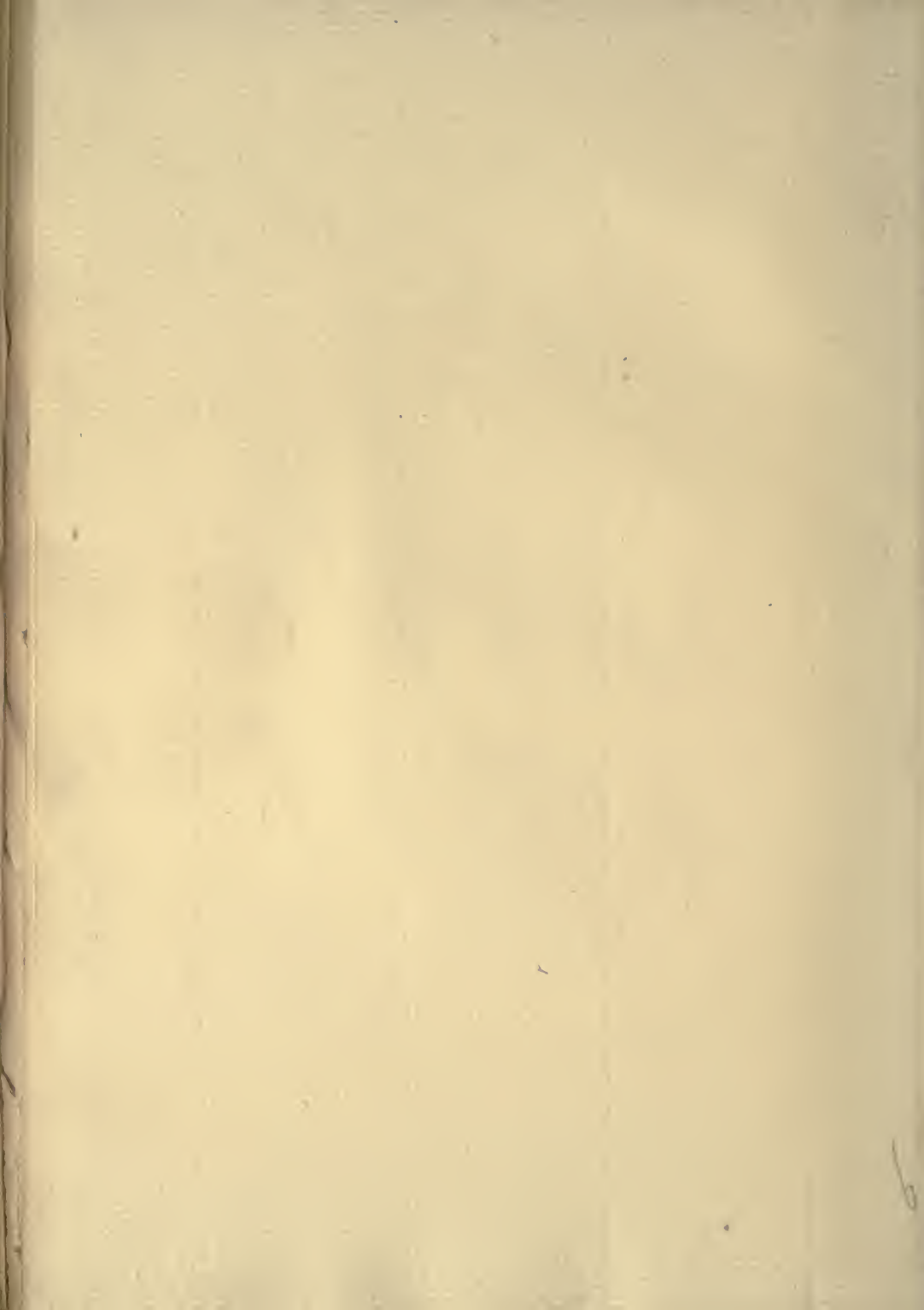
If the perversion and misapplication of legal tender by congressional legislation is to continue, it may be that New York, and other self-respecting States in the Union, will be constrained to consider whether or not a State law can be constitutionally enacted and enforced which will take care that the obligation of every future contract made, or implied, for the payment of dollars within the State, but not specifying the sort of dollars, shall be discharged only in *gold* dollars (and in silver coins if less than one dollar), of the United States, the same being of the weight and fineness fixed by Congress at the time the contract shall have been made or implied.

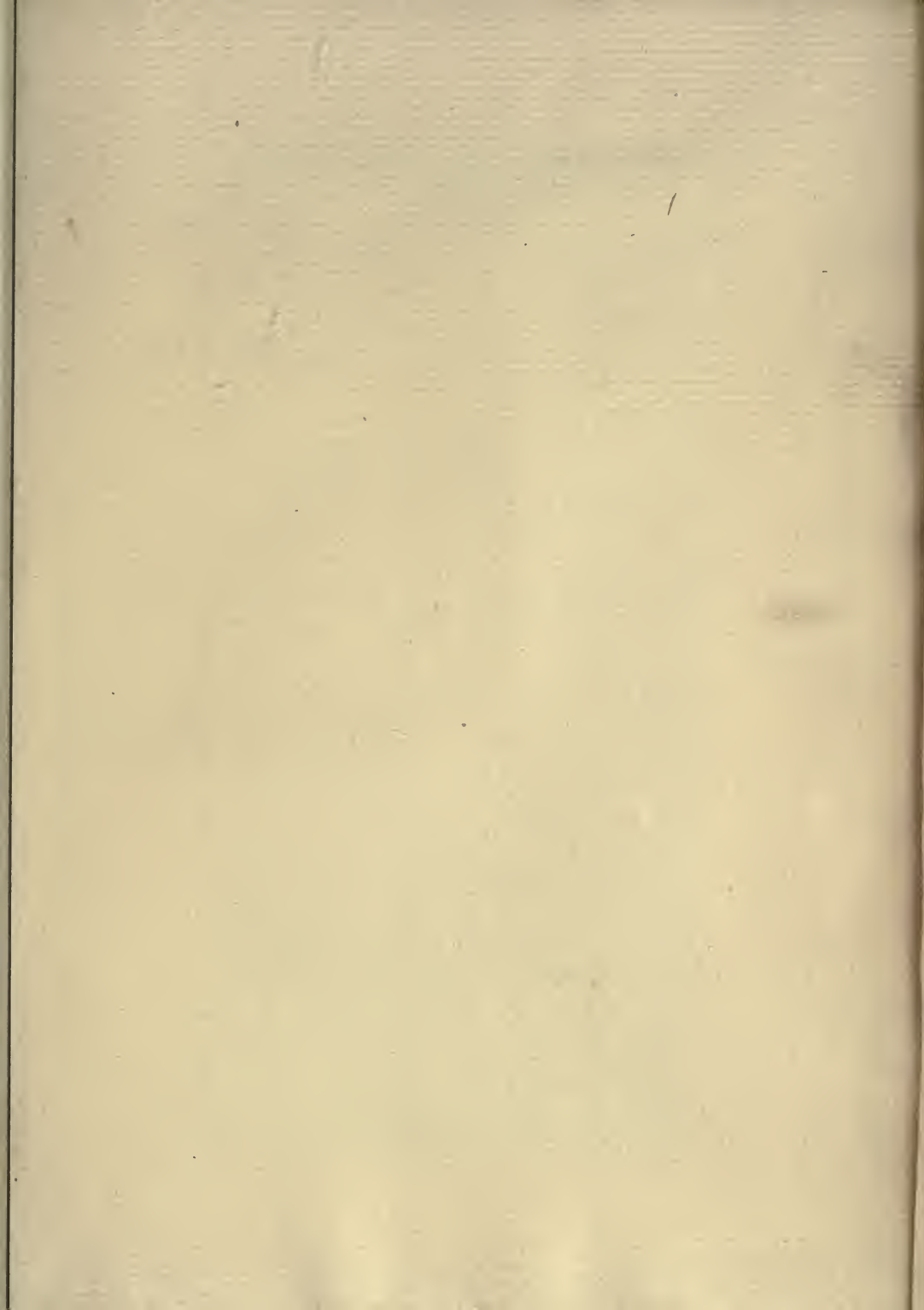
THE END.











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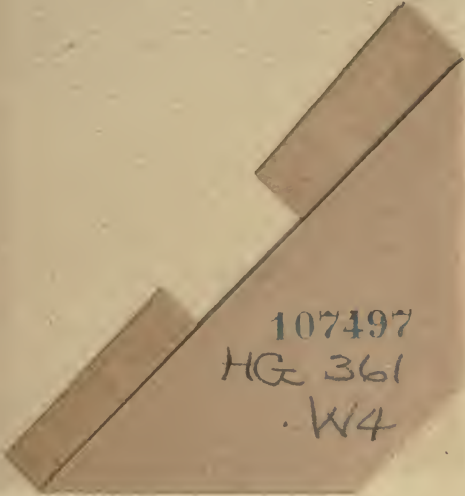
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